

## 2017 House Bill 110 – Amended Exempt Claim Filing Statute

### Frequently Asked Questions

1. What is an exempt water right?
  - a. An exempt right is a water right in existence before July 1, 1973 that was exempted by statute from two previous mandatory claim filing periods. Exempt rights are for livestock and individual domestic uses based upon instream flow or groundwater sources. Exempt rights do NOT include rights for irrigation, diverted stockwater from ditches and reservoirs, or commercial/municipal wells.
2. Why do I want to file my exempt water right?
  - a. By filing your exempt water right, you will be able to enforce the right against all junior timely filed water rights in the state, including DNRC groundwater certificates and DNRC water use permits. In addition, when your exempt water right is filed and recorded with the DNRC, you will be entitled to receive notice of various water right proceedings in your basin.
3. What happens if I don't file my exempt water right?
  - a. Your water right will NOT be enforceable against any filed water rights, including water rights that are junior in priority. Your unfiled exempt right may be enforceable against other unfiled exempt rights, but your right will have to be proved up in District Court to do so.
4. How much is the exempt claim filing fee?
  - a. \$130.00 for the DNRC claim filing fee, with a \$1560.00 cap, or 12 claims per Water Division. All claims beyond 12 for a single, discrete owner within a single Water Division have no additional filing fees.
5. When is the exempt right claim filing period? When does it start and when does it end?
  - a. The exempt right claim filing period for this bill began on May 7, 2017 and ends on June 30, 2019.
  - b. **Claims have to be received or postmarked on or before June 30, 2019.**

6. Where can I get exempt water right claim forms?
  - a. Claim forms are available at any DNRC Regional Office, the Montana Water Court, and online at:  
<http://dnrc.mt.gov/divisions/water/adjudication/hb-110-exempt-claim-filing>
7. Do I still need to file a Petition for Judicial Determination of Exempt Water Rights with the Water Court when I file my Statement of Claim form?
  - a. No. House Bill 110 amended Senate Bill 355, the original exempt claim statute. Beginning on May 7, 2017, a petition is no longer required.
8. Will my exempt water right statement of claim be handled in the same way as previously filed statements of claim, exempt or not?
  - a. Yes. Upon filing, the DNRC will assign your exempt water right a claim number. Examination of your claim in preparation for the next decree will be conducted based on time frames set by the Water Court and DNRC. In the interest of preserving equal treatment and due process for all water users in Montana, your exempt water right claim filing will be examined and adjudicated in the same manner as any other timely filed existing water right in the statewide adjudication.
9. If I filed an exempt right before April 30, 1982 or during the late claim filing period ending on June 30, 1996, should I still file a claim during this claim filing period?
  - a. There is no reason to file an exempt claim during this claim filing period if you filed on that water right during the original claim filing period ending April 30, 1982 or during the late claim filing period July 1, 1993-June 30, 1996.

10. If I filed a Notice of Water Right (Form 627 exempt right notice) with the DNRC, can I still file a claim during this claim filing period?
- Yes. The 627 forms were voluntary filings for the DNRC and were accepted for its public notice efforts. A 627 form is **NOT** considered a valid claim. By filing a statement of claim for your exempt water right, you are establishing a timely filed water right claim entitling you to all the rights held by water users who filed their claims during the original claim filing period ending on April 30, 1982. If you have an existing 627 exempt notice and file for a statement of claim during this filing period, you should withdraw the 627 form to avoid potential confusion of duplicate filings.
11. If I or my predecessors in interest filed a groundwater right in compliance with the 1962 Groundwater Code, but did not file a statement of claim for the right in the Statewide adjudication, do I need to file an exempt right claim at this time?
- No. However, failure to file your exempt claim will result in subordination of your right to all timely filed existing rights, including exempt rights, groundwater certificates, and permits.
12. Is there any other documentation or information I should provide when filing my statement of claim? Do I need to provide evidence to support my exempt water right claim?
- The requirements for exempt claim filings are exactly the same as they were for timely filed claims and late filed claims. You do need to provide evidence to support your claim. Contact your regional DNRC office for more information on evidentiary requirements for your exempt rights, as they can vary depending on the type of historical right.
  - A clear map showing place of use and points of diversion including section, township and range is required.
13. Do I have to pay for public notice costs for my exempt water right to be adjudicated?
- No. House Bill 110 amended Senate Bill 355, the original exempt claim statute, to eliminate the public notice requirements of Section 85-2-233(6), MCA from the exempt claim process. The Montana Water Court will publicly notice your exempt claims during the next decree in your basin.

14. What else is expected of me when I file my exempt claim?
  - a. You will need to work with the DNRC claim examiners to resolve any factual issues they find with your claim. This may create an additional time commitment on your part. Further, you may receive objections to your exempt claim filing when it is publicly noticed. You will need to be prepared to address and resolve any objections that are filed before the Water Court will issue a final decree for your exempt water right.
15. Do I forfeit my exempt right if I don't file a claim?
  - a. No. Your right to use water will remain valid provided it is based on historic beneficial use. However, failure to file an exempt claim will result in subordination to all other water rights, except other exempt rights for which a claim has not been filed.